

Lloyd Bernstein, OSB #002030
E-mail: lloyd.bernstein@bullivant.com
BULLIVANT HOUSER BAILEY PC
300 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204-2089
Telephone: 503.228.6351
Facsimile: 503.295.0915
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

MCKENZIE CREEK DEVELOPMENT,
LLC,

Plaintiff,

v.

PROGRESSIVE UNIVERSAL
INSURANCE COMPANY,

Defendant.

Civil No. 6:17-cv-1698:

**COMPLAINT FOR DECLARATORY
JUDGMENT**

I. PARTIES

1. Plaintiff McKenzie Creek Development, LCC (“McKenzie Creek”) is an Oregon corporation with its principal place of business in Bend, Oregon.

///

///

Bullivant|Houser|Bailey PC

300 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204-2089
Telephone: 503.228.6351

COMPLAINT FOR DECLARATORY JUDGMENT

Page 1

2. Defendant Progressive Universal Insurance Company (“Progressive”) is a corporation organized under the laws of the state of Ohio, with its principal place of business in Ohio.

II. JURISDICTION AND VENUE

3. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. The Court has jurisdiction pursuant to 28 U.S.C. § 1332 (diversity of citizenship) and 28 U.S.C. § 2201 (declaratory judgment).

5. Venue in the District of Oregon, Eugene, Oregon is proper under 28 U.S.C. § 1391 and Local Rule 3.2.

6. An actual controversy exists between the parties as to whether McKenzie Creek has a duty to reimburse Progressive for damage to vehicles belonging to Progressive’s insureds that were damaged when McKenzie Creek’s Bend, Oregon warehouse collapsed in January 2017.

III. FACTUAL BACKGROUND

7. McKenzie Creek is the owner of a warehouse at 175 NE Industrial Way in Bend, Oregon (the “Warehouse”). The Warehouse was used as a storage facility and space was rented to individuals who stored recreational vehicles, trailers, and boats.

8. On January 11, 2017, the Warehouse collapsed due to a record amount of snowfall in Bend, Oregon.

9. As a result of the collapse, numerous vehicles and other property stored in the Warehouse were damaged.

10. Several of the vehicles that were damaged were insured by Progressive.

11. Progressive, as subrogee of its insured vehicle owners, has made demands for payment to McKenzie Creek for reimbursement of the amounts it has paid to its insureds.

12. Progressive Universal has made a demand for \$52,623.50 for a vehicle owned by its insured, David Barnett. A copy of the Barnett subrogation demand is attached as Exhibit A.

13. Progressive Universal has made a demand for \$20,489 for a vehicle owned by its insured, Dustin Guilbert. A copy of the Guilbert subrogation demand is attached as Exhibit B.

14. Progressive Universal has made a demand for \$38,690 for a vehicle owned by its insured, Daniel Hobin. A copy of the Hobin subrogation demand is attached as Exhibit C.

15. Progressive Universal has made a demand for \$22,250 for a vehicle owned by its insured, Kevin Schaffer. A copy of the Schaffer subrogation demand is attached as Exhibit D.

16. All of Progressive's insureds entered into a Storage Rental Agreement with McKenzie Creek. The Storage Rental Agreement includes a section titled "Release, Waiver, Indemnification and Hold Harmless" that states in part:

Renter agrees to release and hold harmless McKenzie Creek Development, LLC, its successors and assigns, employees, agents and representatives from any and all claims for damage to the vehicle stored, its contents and any other personal property, however caused.

17. A copy of the Barnett Storage Rental Agreement is attached as Exhibit E.

18. A copy of the Guilbert Storage Rental Agreement is attached as Exhibit F.

19. A copy of the Hobin Storage Rental Agreement is attached as Exhibit G.

20. A copy of the Schaffer Storage Rental Agreement is attached as Exhibit H.

21. Pursuant to the “Release, Waiver, Indemnification and Hold Harmless” provision of the Storage Rental Agreements, Progressive’s insureds have released and waived any right to collect from McKenzie Creek for any and all claims for damage to the vehicle stored, its contents and any other personal property, however caused. For this same reason, Progressive, as subrogee of the renters, may not collect from McKenzie Creek for any and all claims for damage to the vehicle(s) stored, [their] contents and any other personal property, however caused.

22. McKenzie Creek seeks a declaratory judgment that it has no obligation to reimburse or otherwise make payment to Progressive for damage to Progressive’s insureds’ vehicles.

IV. PRAYER FOR RELIEF

WHEREFORE, McKenzie Creek prays for entry of judgment as follows:

1. For a declaration that pursuant to its Storage Rental Agreement McKenzie Creek has no obligation to reimburse or otherwise make payment to Progressive for damage to Progressive’s insureds’ vehicles;

///

///

///

///

///

///

Bullivant|Houser|Bailey PC

300 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204-2089
Telephone: 503.228.6351

COMPLAINT FOR DECLARATORY JUDGMENT

Page 4

2. For McKenzie Creek's costs and disbursements incurred in this lawsuit; and
3. For any other relief the Court deems just and proper.

DATED: October 25, 2017

BULLIVANT HOUSER BAILEY PC

By /s/ Lloyd Bernstein
Lloyd Bernstein, OSB #002030
Telephone: 503.228.6351
Attorneys for Plaintiff

4815-1917-0640.1 03026/00117